

P.E.R.C. NO. 88-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-174-18

PISCATAWAY TOWNSHIP PRINCIPALS
AND SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Piscataway Township Principals and Supervisors Association against the Piscataway Township Board of Education. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when it changed Marge Cafiero's job title and reduced her work year and annual salary without first negotiating with the Association. The Commission finds the Board had the managerial prerogative to abolish Cafiero's former position and to assign her to a different position. The Commission further finds that the Board met its negotiations obligation when it paid Cafiero the contractual salary set for department supervisors and increased that salary pursuant to the written memorandum of agreement.

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Charging Party.

Appearances:

For the Respondent, Rubin, Rubin & Malgran, Esqs.
(David B. Rubin, of counsel)

For the Charging Party, Robert M. Schwartz, Esq.

DECISION AND ORDER

On January 13, 1986, the Piscataway Township Principals and Supervisors Association ("Association") filed an unfair practice charge against the Piscataway Township Board of Education ("Board"). The charge alleges the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3), and (5),^{1/} when it

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or

changed Marge Cafiero's job title and reduced her work year and annual salary without first negotiating with the majority representative.

On August 4, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On November 10, 1986, Hearing Examiner Stuart Reichman conducted a hearing. At the outset, the Board was granted leave to file its Answer. It admitted the changes and reductions in question, but asserted it had a managerial prerogative to abolish Cafiero's job and assign her to a new position and that it negotiated in good faith over her compensation. The parties examined witnesses and presented exhibits. They also filed post-hearing briefs.

On May 7, 1987, the Hearing Examiner recommended that the Complaint be dismissed. H.E. No. 87-63, 13 NJPER 419, (¶18163 1987). He first concluded that the Board had a managerial prerogative to abolish Cafiero's job and assign her to a different position. He also concluded that the Board made a good faith attempt to negotiate a salary for the new position, but was unable to reach an agreement with the Association even though the parties reached an agreement for a successor contract. He suggested that

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condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

the parties continue to negotiate compensation for Cafiero's new position.

On May 27, 1987, the Association filed exceptions. It contends that the Board reneged on an agreement at the first negotiations session not to reduce Cafiero's salary and that the Board refused to negotiate in good faith by ignoring the Association demands concerning Cafiero's salary. It contends the Hearing Examiner's findings were contradictory because he found that the Association repeatedly stated its position to the Board, but nevertheless found that the Board believed the issue had been dropped by the Association.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-10) are generally accurate. We do, however, disagree with his conclusion at p. 8, 13 NJPER at 421 that "[a]t the conclusion of the mediation session the Cafiero issue remained unresolved." Likewise, we disagree with his conclusion at p. 15, 13 NJPER at 422 that the parties "have, in effect, mutually agreed to reserve [Cafiero's salary] from the overall collective agreement for further negotiations or impasse resolution proceedings." We find that the Board paid Cafiero the contractual rate set for his new position of department supervisor. Further, while the Association proposed that Cafiero be paid the same rate as in her former position, it did not achieve that goal in the successor contract negotiations. Rather, the written memorandum of agreement, which resolved the salaries for all unit employees, simply provided "[E]ffective 7/1/85, 6% increase across the Board." The Board complied with this provision when it increased Cafiero's salary to \$41,817 from \$39,759.

Because of this finding, we dismiss the Complaint. The Board had the managerial prerogative to abolish Cafiero's former position and to assign her to a different position. Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER ____ (¶ ____ 1987); Bergen Pines Cty. Hosp., P.E.R.C. No. 87-25, 12 NJPER 753 (¶17283 1986). Further, while compensation for the new position is mandatorily negotiable, Trenton, the Board met its obligation when it paid Cafiero the contractual salary set for department supervisors and increased that salary pursuant to the written memorandum of agreement. Given these written agreements, the Association's claim that it had not reached agreement on Cafiero's salary and the alternative argument that another salary had been orally agreed to at the first negotiations session are not supported by the record. The parties' intent, as expressed in writing, controls. See Jersey City Bd. of Ed., P.E.R.C. No. 84-64, 10 NJPER 19, 21 (¶15011 1984).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Reid was not present.

DATED: Trenton, New Jersey
October 22, 1987
ISSUED: October 23, 1987

H.E. NO. 87-63

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-174-18

PISCATAWAY TOWNSHIP PRINCIPALS AND
SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Piscataway Township Board of Education did not violate N.J.S.A. 34:13A-5.4(a)(1) (3) or (5) when it unilaterally changed a teacher's job title and reduced her annual salary and work year. Pursuant to its inherent right to implement a reorganization plan, the Board eliminated the teacher's 12 month position and appointed her to a newly created 10 month position. Since the Parties conducted exhaustive negotiations regarding the salary level for the newly created job, no §5.4(a)(5) violation was found. However, the Hearing Examiner found that the Parties reserved the single issue of the salary level for the newly created position for later negotiations, notwithstanding the fact that they entered into and ratified a successor collective agreement.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

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Appearances

For the Respondent
Rubin, Rubin & Malgran
(David B. Rubin, of counsel)

For the Charging Party
Robert M. Schwartz, Esq.

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

On January 13, 1986, the Piscataway Township Principals and Supervisors Association ("Association") filed an unfair practice charge against the Piscataway Township Board of Education ("Board") with the Public Employment Relations Commission ("Commission"). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. ("Act"), specifically subsections 5.4(a) (1), (3), and (5),^{1/} when it

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

unilaterally changed Ms. Marge Cafiero's job title and reduced her annual salary without negotiating with the majority representative. On August 4, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing.

A Hearing in this matter was conducted on November 10, 1986, at the Commission's offices in Trenton, New Jersey at which time the parties were afforded the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. The Parties filed post-hearing briefs. Both the Charging Party's and the Board's briefs were received on February 13, 1987. Neither Party chose to file a reply brief.

The Board did not file an Answer in this matter prior to the date of Hearing. At the outset of the Hearing the Board placed its Answer on the record (T 7-8).^{2/} The Association indicated that it was aware of the nature of the defenses to be raised by the Board and raised no objection to the Board placing its Answer on the record at

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restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ T 1 refers to the transcript of the Hearing conducted on November 10, 1986 at page 1.

the Hearing (T 6). The Board denied that it had committed any unfair practice.

Upon the entire record, I make the following:

FINDING OF FACT

The Piscataway Township Board of Education is a public employer within the meaning of the Act and is the employer of the employee involved in this matter. The Piscataway Township Principals and Supervisors Association is an employee representative within the meaning of the Act and represents the employee involved in this matter.

Negotiations for a successor agreement began in December 1984, or January 1985.^{3/} At the outset of the negotiations, the Board

^{3/} There exists a dispute between the Parties whether the first negotiations session was on December 13, 1984, or January 16, 1985. The Association contends that the first negotiations session conducted by the Parties was on December 13, 1984. The Association states that during this session Gordon A. Moore, Director of Staff Personnel, advised the Association that the Board intended to effect a reorganization that would result in the elimination of the title Program Coordinator: Special Education (12 months) and replace it with the title Department Supervisor for Special Education (grades 6-12), a 10 month position with classroom teaching responsibilities. Marge Cafiero served in the title Program Coordinator: Special Education (12 months). The Association asserts that Moore made a commitment at the negotiations table during the first session to continue Cafiero's salary at the higher Program Coordinator rate rather than the lower Department Supervisor rate. While Moore admits telling the Association that Cafiero would be "protected" and, thus, not be terminated from the school district, he contends that he never promised to freeze her salary at the old rate when she moved into the new title. I find that the resolution of the disputes concerning when negotiations commenced and whether, during the negotiations, Moore committed to freeze Cafiero's salary is not crucial to the determination of this matter. Furthermore, whatever happened in December, 1984, and January, 1985, falls

advised the Association that it intended to implement a reorganization plan which would impact on the negotiations unit. The reorganization called for the elimination of the Program Coordinator: Special Education (12 month) ("Program Coordinator"), a job title included in the unit. Marge Cafiero ("Cafiero") served in the Program Coordinator job. The Board's reorganization plan provided for the establishment of a new job--Department Supervisor for Special Education (grades 6-12) ("Department Supervisor"), a 10 month position.

Immediately upon being advised of the reorganization plan, the Association asked whether there would be any adverse impact on Cafiero's job. The Board stated that "the position change is at no danger to the person presently in the position." (CP-1; T21; T120-121).^{4/} The Board explained that Cafiero would not be terminated, but would be reassigned into the newly established Department Supervisor position. The Board said that the Department Supervisor position would neither be posted nor opened to any other candidate. The Board stated that Cafiero would be treated in the same manner as other employees serving in a department supervisor's

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outside the six month statute of limitations established in the Act for the filing of unfair practice charges. N.J.S.A. 34:13A-5.4(c).

4/ CP-1 refers to exhibit 1 offered by the Charging Party and received in evidence; R-1 refers to exhibit 1 offered by the Respondent and received in evidence; J-1 refers to exhibits offered jointly by the Parties.

position: work a 10 month school year and teach two class periods daily. Additionally, the Board took the position that Cafiero would be paid in the same manner and at the same level as other department supervisors. In terms of Cafiero's salary, this meant a reduction.

In response to the Board's reorganization plan, the Association expressed the position that changes in work year and compensation are mandatorily negotiable. The Association advised the Board that it could not unilaterally implement such changes without first negotiating with the Association. The Association also took the position that Cafiero's salary should be frozen until the upward progression of salaries for the department supervisor title, as a whole, equalled or exceeded Cafiero's pay rate. The Association stated that if the Board reduced Cafiero's salary, it would file an unfair practice charge with the Commission.

The Board responded by reiterating its position that Cafiero's salary would be at the rate commensurate with the new Department Supervisor position. For Cafiero, this meant a reduction from her salary as Program Coordinator. The Board stated that it did not view its action as a reduction in Cafiero's work year, but rather the elimination of her 12 month position and the offer of a newly created 10 month position. Burt Edelchick, Superintendent of schools and one of the Board's negotiators, told the Association that if the Association determined the appropriate course of action regarding Cafiero's salary to be the filing of an unfair practice charge, the Association should "do what you have to do" (T 29).

The Parties conducted additional negotiations sessions on March 6, April 17, May 14, June 27, and August 18, 1985. During each of the negotiating sessions, the issue of whether Cafiero's salary would be reduced as the result of the Board's intended reorganization was raised and discussed. Each Party consistently maintained its initial position. The Association stated that under no circumstances would it agree to a reduction in Cafiero's salary, and if the Board unilaterally reduced her salary, it would file an unfair practice charge. The Board responded by stating that it intended to implement its reorganization plan which included the elimination of Cafiero's Program Coordinator job and the appointment of Cafiero to the newly created Department Supervisor position at the same salary level paid to other department supervisors. The Board expressed the position that if the Association was intent upon filing an unfair practice charge on this issue, then, it should do so.

On April 29, 1985 (T 170), the Program Coordinator position in which Cafiero served was abolished by Board action. Gordon A. Moore, Director of Staff Personnel, met with Cafiero in early May, 1985, in order to apprise her of the Board's action and discuss how it would affect her. Moore told Cafiero that the Board would establish a new position into which she would be moved. The new position would not be posted or available to other candidates, and Cafiero would not have to take any specific action in order to apply for it. Moore told Cafiero that she would be automatically appointed to the position. On June 24, 1985 the Board established the position of Department

Supervisor for Special Education (grades 6-12) (10 month) and appointed Cafiero to it. No challenge concerning the abolition of the Program Coordinator position or the establishment and appointment of Cafiero to the Department Supervisor position was ever filed by the Association with the Commissioner of Education.

Cafiero's salary at the end of the 1984-1985 school year in the Program Coordinator position was \$44,143. For school year 1985-1986, her salary in the Department Supervisor position was \$39,759.^{5/}

Cafiero began working in the Department Supervisor position in September 1985. Many of the job duties Cafiero performed while serving in the Department Supervisor job were the same as those for which she was previously responsible in the Program Coordinator position. Both jobs required Cafiero to assist in recruitment, screening and training, to conduct department meetings, to be responsible for department budgets and inventories, to evaluate teachers and to perform other duties as necessary. However, there are also significant differences between the jobs. Cafiero was no longer assigned any program coordinator responsibilities involving special education in the elementary school (kindergarten through grade 5). Additionally, Cafiero was required to teach two classroom periods

^{5/} Subsequently, a successor agreement was reached by the Parties. The agreement provided for a retroactive salary increase, which raised Cafiero's salary to \$41,817 (T 39; R-4).

daily. Consequently, I find the Program Coordinator and Department Supervisor positions to be different jobs.

The Parties reached impasse in their negotiations and sought mediation. On October 23, 1985, a mediation session was conducted by a Commission mediator. The mediator separated the Parties at the outset of the meeting and no face-to-face negotiations took place during that session. The Parties communicated with each other only through the mediator.

One of the several unresolved matters raised by the Association to the mediator was the Cafiero issue. The Association informed the mediator that it was firm in its position that if the Board refused to freeze Cafiero's salary, it would file an unfair practice charge. While the Board was aware that the Cafiero issue was unresolved as it entered mediation, the mediator never addressed the Cafiero issue with the Board during mediation. At the conclusion of the mediation session the Cafiero issue remained unresolved.

The October 23, 1985, mediation session culminated in a Memorandum of Agreement between the Parties (R-4). The Memorandum, which was subject to ratification by the negotiating teams' principals, specifically addressed across-the-board salary increases, longevity and unused sick leave at retirement. The Memorandum also contained a provision which stated: "This agreement is also subject to final resolution on any language items agreed to either in whole or in principle." The memorandum neither referred to the new position nor reserved that issue for subsequent negotiations or litigation.

At the end of the mediation session, the Parties met face-to-face in order to sign the memorandum of agreement and shake hands. Neither Party raised the Cafiero issue. The Board left the mediation session believing that an overall agreement had been achieved, all unresolved issues existing at the commencement of mediation having been dropped.

Pursuant to the October 23, 1985, memorandum of agreement, the Parties met on November 5, 1985. The Parties undertook a detailed review of the predecessor collective agreement in order to make appropriate changes reflective of the understandings reached during negotiations. It was also during this meeting that the Association advised Board representative Moore that there remained several outstanding issues requiring further negotiations. One of the issues upon which the Association sought continued negotiations was Cafiero. The Association reiterated its long-standing position that unless Cafiero's salary was frozen at its 1984-1985 level, the Association would file an unfair practice charge. Believing that all of the issues upon which the Association was now seeking further negotiations had been settled on October 23, 1985, Moore became upset, left the meeting and proceeded directly to Superintendent Burt Edelchick's office to advise him of the Association's position. As a result, later that day, Edelchick met privately with the Association's labor negotiator, Herman Mopsick, in an attempt to resolve the issues still in dispute. Mopsick told Edelchick that if Cafiero's salary were not frozen at the 1984-1985 level, the Association would file an unfair

practice charge. Edelchick acknowledged the Association's position regarding Cafiero at the meeting. Thereafter, the Parties proceeded to resolve the other outstanding issues and memorialized their understandings in a Memorandum of Understanding dated November 5, 1985 (R-5). The November 5, 1985 Memorandum of Agreement made no reference to Cafiero nor did it expressly reserve the Cafiero salary issue for subsequent litigation.

Some time after November 5, 1985, the Association ratified the collective agreement (J-1) covering the period July 1, 1985 through June 30, 1988 (T 61).

ANALYSIS

The Association argues that the Board unilaterally reduced Marge Cafiero's work year from 12 to 10 months which resulted in a related decrease in her salary level. The Association contends that the length of a teacher's work year and level of compensation constitute mandatorily negotiable terms and conditions of employment. Therefore, before the Board can make changes in a teacher's work year or level of compensation, it must first fully negotiate the proposed changes with the majority representative. Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Principals Ass'n., 164 N.J. Super. 98 (App. Div. 1978).

It is well established that public employers have the managerial prerogative to abolish and create positions and to transfer, assign and reassign employees in order to meet operational needs. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n., 78

N.J. 144 (1978); Ramapo-Indian Hills Ed. Ass'n. v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 276 N.J. Super 35 (App. Div. 1980); Maywood Bd of Ed., 168 N.J. Super 45, certif. den. 81 N.J. 292 (1974); Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶ 16042 1985); Trenton Bd. of Ed., P.E.R.C. No. 83-37, 8 NJPER 574 (¶ 13265 1982); Deptford Tp. Bd. of Ed., P.E.R.C. No. 80-82, 6 NJPER 29 (¶ 11014 1980). It is also well established that a change in a teacher's work year is mandatorily negotiable. Burlington Cty. College Fac. Ass'n. v. Bd of Trustees, 64 N.J. 10 (1973); State of New Jersey (Ramapo College), P.E.R.C. No. 86-28, 11 NJPER 580 (¶ 16202 1985); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶ 14066 1983). However, it is important not to confuse the right of the majority representative to negotiate over work year changes with the public employer's right to create new positions and determine the appropriate job duties. In Ramapo-Indian Hills, supra, the court held that management has the right to unilaterally create a new position and establish the duties which the employee serving in the title will perform. However, an employer is not free to unilaterally change the salary or work year of a position included in the unit where it merely designates a different title for what is the same job. In such cases the employer retains its statutory mandate to negotiate prior to implementing the change. Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶ 12015 1980), aff'd. App. Div., Docket No. A-1818-80T1 (May 24, 1982).

In this case, the record demonstrates that the Board took specific steps to abolish the position of Program Coordinator in April, 1985, and to establish the position of Department Supervisor in June, 1985. If there were any impropriety in the Board's actions of abolishing and creating those positions, it was never challenged by the Association. Moreover, I have found the duties of the jobs to be sufficiently changed so as to conclude that the jobs are, indeed, different. The Department Supervisor is not merely the same job as the Program Coordinator changed to a 10 month from a 12 month work year. Therefore, I find that the Board has not violated the Act by refusing to negotiate with the Association over the reduction in the work year of a unit employee. Rather what occurred here was the creation of the Department Supervisor and the elimination of the Program Coordinator positions. These actions were taken by the Board pursuant to the legitimate exercise of its inherent right to effectuate a reorganization plan. Cf., Deptford Bd. of Ed., supra.

After holding that management has the right to create new positions, the Ramapo court went on to find that compensation for the newly established position is mandatorily negotiable. Ramapo-Indian Hills, 176 N.J. Super at 48. Cases have held that the Association not only has the right, but, in fact, carries the burden to demand negotiations regarding the level of compensation established for a newly created title. See, Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶ 15265 1984); Trenton Bd. of Ed., H.E. No. 87-51, 13 NJPER ____ (¶ ____ 1987); accord, Town of Secaucus, H.E. No. 87-41, 13

NJPER 219 (¶ 18094 1987), aff'd. P.E.R.C. No. 87-104, 13 NJPER ____
(¶ ____ 1987).

The issue of Cafiero's salary was raised and discussed by the Parties at each negotiations session. The Association took the position that the salary for Cafiero's Department Supervisor position should remain unchanged from the salary she received as Program Coordinator. The Association argued in negotiations that the difference between the two jobs was insignificant, and, in any event, Cafiero should be protected against a decrease in pay. The Association sought to have Cafiero's salary level maintained at the Program Coordinator level until the salaries of other department supervisors rose or exceeded her rate. The Board responded to the Association by stating that Cafiero's Program Coordinator and Department Supervisor jobs were different and, consequently, warranted different salaries. The Board took the position that it was reasonable and appropriate to establish Cafiero's salary at the same level as the other department supervisors (10 month) in the school district. Thus, the Parties, through repeated exchanges of their respective positions regarding the proper salary for Cafiero, negotiated the issue. The record demonstrates that each Party remained resolutely firm in its position from the first time the Cafiero issue arose in negotiations until the November 5, 1985, joint meeting.

Consequently, what occurred in this case is an example of "hard bargaining" on the part of both Parties. It has long been

settled that a party is not required to modify its negotiations position in order to negotiate in good faith. State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd. sub nom, State v. Council of N.J. State College Locals, 141 N.J. Super 470 (App. Div. 1976). In this case, I find that the Board has neither refused to negotiate with the Association over the appropriate salary level for Cafiero's Department Supervisor position nor violated § 5.4(a)(5) and, derivatively, (a)(1) of the Act.

Having found that the Board has not refused to negotiate with the Association over the establishment of the level of compensation for the Department Supervisor position, the issue of whether the Board has any continuing negotiations obligation regarding the establishment of Cafiero's salary still must be addressed. When the mediation session was conducted on October 23, 1985, the issue of Cafiero's salary was not resolved. During the November 5, 1985 meeting, the Association raised the Cafiero issue, thereby placing the Board on notice that the matter remained open. Each Party was fully aware of the other side's position on the issue. While the Board may have been under the impression that the issue had been dropped by the Association during mediation, the Board, nonetheless, agreed to proceed with the finalization of the successor agreement on November 5, 1985, knowing that the Cafiero issue remained unsettled.

It is reasonable to hold the party initiating a demand responsible for insisting that such demand is adequately addressed at each stage of the negotiations process. In this case the Parties

clearly reached an impasse on the Cafiero issue. Although the Parties entered into mediation with the Cafiero issue unrevolved, the Association was still willing to execute a memorandum of agreement without insisting upon that issue being specifically addressed. Thus, I find that Cafiero issue was never pressed during the impasse process. However, having also found that on November 5, 1985, the Board knew that the Cafiero issue remained unresolved and proceeded anyway to finalize the successor agreement, I find that the Parties have, in effect, mutually agreed to reserve this single issue from the overall collective agreement (J-1) for further negotiations or impasse resolution proceedings. Accordingly, I find that the Cafiero issue has not been waived by the Association during the negotiations for a successor agreement. Thus, it appears that upon proper demand, the Board should enter into negotiations^{6/} with the Association regarding the level of compensation for Cafiero's Department Supervisor position.

The Association also alleges that the Board violated § 5.4(a)(3) of the Act. However, the Association introduced no evidence showing that the Board discriminated in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act.

^{6/} I recognize that the Parties have conducted exhaustive negotiations on this issue. However, the issue has not been addressed through the impasse process. Consequently, it may be more appropriate at this stage for the Parties to seek the invocation of the Commission's impasse resolution procedures on the Cafiero issue

Accordingly, on the basis of the entire record and the analysis set forth above, I make the following:

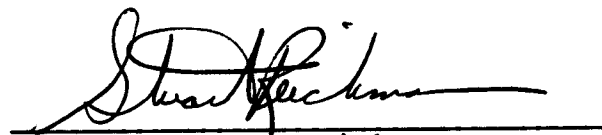
CONCLUSIONS OF LAW

1. The Piscataway Township Board of Education did not violate N.J.S.A. 34:13A-5.4(a)(5) and, derivatively (a)(1) when it abolished the title Program Coordinator: Special Education (12 months) and created and set an initial salary for the title Departmental Supervisor for Special Education (grades 6-12).

2. The Piscataway Township Principals and Supervisors Association did not prove, by a preponderance of the evidence, that the Piscataway Township Board of Education violated any other section of the New Jersey Employer-Employee Relations Act as alleged in its unfair practice charge.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the complaint issued in this matter be dismissed.



Stuart Reichman
Hearing Examiner

DATED: May 7, 1987
Trenton, New Jersey